Careaga v. Becker[15] this doctrine was extended to permit foreclosure of mechanic's liens though the claims were among those secured by a mortgage given by the contractor to the materialman. In *Post v. Becker*[16] it was held that the mortgage could be foreclosed so long as the claims on which lien actions were pending were not included in the foreclosure.

The later cases seem to manifest a more liberal view than was shown in the earlier decisions construing the statute. Indeed in the Careaga case it was said that the section was inapplicable except in an action involving the debt directly secured by the mortgage, and furthermore that it existed merely for the protection of the principal debtor and could be waived by him. It seems to have been tacitly assumed by the profession that this section, like the equity of redemption, was founded on public policy and could not be waived by the parties. None of the mortgage forms in general use appear to contain such a waiver, though otherwise very favorable to the mortgagee. The cases that have discussed the matter heretofore have merely said that the section was passed to relieve the principal debtor from the harassment of numerous actions when one would be sufficient, and to make the mortgaged property the fund primarily liable for the debt.[17] It would appear then that the section merely states a method to be followed in the absence of agreement to the contrary. Indeed, its provisions may to some extent be avoided by use of the trust deed, or mortgage with power of sale, forms of security. It does not seem to be founded any deeper in public policy than the statute of limitations, homestead or execution exemptions, all of which may be waived, at least in part, or by complying with certain formalities. The effect of the dictum in the principal case will probably be to cause the addition of a waiver of section 726 to many mortgages hereafter drawn in this state.

J. S. M., Jr.

WATER LAW: IRRIGATION DISTRICTS: RIGHTS OF PROSPECTIVE CONSUMERS.—The increasing importance of irrigation and the creation of numerous large and important enterprises for the purpose of distributing water to the public have given rise to a multiplicity of novel questions involving the respective rights of the water users as between themselves and also with

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(Jan. 25, 1915), 20 Cal. App. Dec. 146. Rehearing denied by Supreme Court March 26, 1915.

[15] (Feb. 11, 1915), 49 Cal. Dec. 142, 146 Pac. 665.

[16] (Jan. 23, 1915), 20 Cal. App. Dec. 142, 147 Pac. 98.

[17] Ould v. Stoddard, supra, n. 6; Toby v. Oregon Pac. R. R. Co. (1893), 98 Cal. 490, 33 Pac. 550; Commercial Bank v. Kershner (1898), 120 Cal. 495, 52 Pac. 848; Hellyer v. Baldwin (1890), 53 N. J. L. 141, 20 Atl. 1080; Winters v. Hub Min. Co. (1893), 57 Fed. 287.

relation to the distributing companies and the regulation of the latter as public service corporations. An entirely new branch of law is being developed, and the Supreme Court of California has played an important part in determining many of these original problems. The decision in *Byington v. Sacramento Valley West Side Canal Company*[1] presents some of these interesting propositions.

The plaintiffs were the owners of irrigable lands within the boundaries of the Central Irrigation District, which had been organized and started under the Wright Act, had gone through various vicissitudes during the period of litigation involving the constitutionality of that act, and, like most of the districts commenced under that act, was unable to consummate the object of its organization.[2] The defendants had succeeded to whatever rights remained in the *de facto* district, (for the proceedings leading up to the organization of the district had been held void)[3] and were extending their canals toward the lands owned by the plaintiffs. They were, however, also preparing to irrigate lands outside of the primary territory originally embraced within the district and were adopting the policy of purchasing lands inside the district and selling such lands with a preferential water right to the exclusion of lands held by other private owners. It was to safeguard their incipient right to such water that these private owners invoked the protection of the court and asked it to quiet their title and claim to the prospective use of the water and to forestall the creation of adverse claims in the meantime. The court held that this injunctive relief was appropriate even though the plaintiffs were not so situated as to be in a position to take water until the main canal had been extended to the vicinity of their lands. Cases were cited when such protection was given as between distinct individual appropriators and users,[4] and the right of prospective water users within the limits of an irrigation district to be served with water from the system, when available, was held to be equally entitled to protection from outside consumers, and also as against any discrimination or attempt on the part of the distributing company to convey a preferential right to a special class of landowners within the district.[5] In this respect the California courts do

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[1] (April 29, 1915), 49 Cal. Dec. 633, 148 Pac. 790.

[2] For an interesting account of this period see Chandler, Elements of Western Water Law, 136-7; Wiel, Water Rights, 3d ed., §§ 1356-1358.

[3] In re Central Irrigation District (1897), 117 Cal. 382, 49 Pac. 354.

[4] Inyo Cons. Water Co. v. Jess (1911), 161 Cal. 516, 520, 119 Pac. 934; Merritt v. City of Los Angeles (1912), 162 Cal. 47, 50, 120 Pac. 1064.

[5] Following Leavitt v. Lassen Irrigation Co. (1909), 157 Cal. 82, 89, 106 Pac. 404; see also Wiel, Water Rights, §§ 1283-1284.

not consider the consumer as an appropriator, and hence legitimate consumers cannot acquire preferential rights as between themselves, while in some of the semi-arid states where the consumer is regarded as an appropriator, priorities and preferences are permitted.[6]

W. E. C.

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[6] See article, Wiel, Water Titles of Corporations and their Consumers, 2 Cal. Law Rev. 273, 2 id. 511.